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AND TENANT § 210c; *King v. Wilson*, 98 Va. 259, 35 S. E. 727; *Dougal v. McCarthy*, [1893] L. R. 1 Q. B. 736. And whether a term is applicable is a question of fact for the jury. *Oakley v. Monck*, [1866] L. R. 1 Ex. 159; *Mayor of Thetford v. Tyler*, 8 Q. B. 95. In an analogous situation consistency with the tenancy from year to year is the test. Where a tenant enters under an agreement for a lease, which is never executed, and pays an annual rent, a tenancy from year to year arises. Into this tenancy the terms of the intended lease, as far as they are applicable, are imported. *Thomson v. Amey*, 12 A. & E. 476. It would seem that the test should be the same in both these situations as the tenancy from year to year is, in each case, created by operation of law. *REDMAN, LANDLORD AND TENANT*, 6 ed., 12. The principal case stands alone in failing to use the consistency test. The result also appears wrong; for in answer to the question of fact it would seem that an option to purchase is consistent with a tenancy from year to year. *D'Arras v. Keyser*, 26 Pa. 249.

LEGACIES AND DEVISES — ADEMPTION — DEVISE OF RENT CHARGE: EFFECT OF TESTATOR'S PURCHASE OF THE FEE. — A will contained a devise of a rent charge. Later the testator bought in the fee, the conveyance expressly stating that there was a merger. *Held*, that there was an ademption of the rent charge. *In re Bick*, [1920] 1 Ch. 488.

Ademption occurs whenever the specific thing has ceased to belong to the testator. *In re Bridle*, 4 C. P. D. 336. And the application of this doctrine does not depend upon the intention of the testator. *May v. Sherrard*, 115 Va. 617, 79 S. E. 1026; *Stanley v. Potter*, 2 Cox 180. Although the principle is usually strictly applied, a mere change in the form of the *res* is held not to involve ademption. *In re Clifford*, [1912] 1 Ch. 29; *Spinney v. Eaton*, 111 Me. 1, 87 Atl. 378; *Clough v. Clough*, 3 Myl. & K. 296. The present case is one of a class of cases where the change, although it does not result in a surrender of the *res*, is more than formal. Thus, on purchase of the fee, a leasehold held by the purchaser merges therein and a specific legacy of such a leasehold is adeemed. *Emuss v. Smith*, 2 De G. & S. 722; *Capel v. Girdler*, 9 Ves. Jr. 509. Similarly, a bequest of a sublease is adeemed by taking an assignment of the original lease. See *Porter v. Smith*, 16 Sim. 251. In the converse case it has been held that a devise of a specific tract of land is not adeemed *in toto* by a subsequent lease. *Brady v. Brady*, 78 Md. 461, 28 Atl. 515.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — AMOUNT OF COMPENSATION: TIPS RECEIVED IN COURSE OF EMPLOYMENT. — Claimant was a truck driver, engaged in delivering meat. Without the knowledge of his employer, he assisted his employer's customers in hanging up meat after delivery, and received tips for these services. *Held*, that the tips should not be considered in fixing the amount of compensation. *Begendorf v. Swift & Co.*, 183 N. Y. Supp. 917.

Workmen's Compensation Acts provide for compensation based on the "earnings" or "wages" of the employee. See 6 EDW. 7, c. 58, sched. 1, § 2; 1913 NEW YORK LAWS, c. 816, §§ 3 (9), 14. But such "earnings" or "wages" include more than the actual money paid by the employer. That tips may be taken into account in some cases is indisputable. *Penn v. Spiers & Pond, Ltd.*, [1908] 1 K. B. 766 (waiter); *Bryant v. Pullman Co.*, 188 App. Div. 311, 177 N. Y. Supp. 488, aff'd 228 N. Y. 579, 127 N. E. 909 (porter); *Sloat v. Rochester Taxicab Co.*, 177 App. Div. 57, 163 N. Y. Supp. 904, aff'd 221 N. Y. 491, 116 N. E. 1076 (taxicab driver). *Capen v. Terminal Hotel Co.*, 1 Cal. Industr. Acc. Comm., pt. 2, 562 (bell-boy). The principal case, however, is distinguishable, and the decision seems correct. The problem is one of statutory construction, to determine under what circumstances tips are a part of "earnings" or "wages" within the meaning of the statutes. The line may properly be